81-5368

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SUPREME COURT, U.S.

IN THE SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1981

NO. _____

PAUL CUMMINGS and DORIS CUMMINGS

APPELLANTS

VS

TOWN OF OAKLAND

APPELLEE

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

1) Is it constitutionally permissible for a town to take a resident's home based on a tax lien mortgage when the town knows that the statutorily required notice of impending automatic foreclosure of the mortgage has not been received by the resident homeowners and there are alternative means of giving notice more reasonably calculated to apprise the homeowners of the loss of their home than the means used.

2) Does a notice of a claim of tax lien mortgage which does not include any statement of the possibility of foreclosure, time of foreclosure, or manner of foreclosure, given a year and a half before the actual foreclosure, cure a constitutional defect in the manner of giving statutorily required notice of impending automatic foreclosure of the tax lien mortgage, which had it been received would have given notice of the date of foreclosure, the fact that foreclosure means loss of the property and the right of redemption.

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REPORTS

The decision appealed from is reported at 430 A.2d 825 (Me. 1981). It is reported by the Reporter of Decisions as Decision No. 2600, Law Docket No. Ken-80-15 and attached hereto as Appendix 1.

JURISDICTION

This is an appeal from a decision of the Supreme Judicial Court of the State of Maine entered on June 10, 1981. Notice of Appeal was filed with the Supreme Judicial Court of the State of Maine, sitting as the Law Court, on July ~~29~~ 30, 1981. Jurisdiction is conferred on this Court by 28 U.S.C. §1257(2). The case draws in question the validity of a Maine Statute on the ground of its being repugnant to the United States Constitution, and the decision of the Law Court is in favor of its validity.

CONSTITUTIONAL AND STATUTORY PROVISIONS

AMENDMENT XIV

UNITED STATES CONSTITUTION

SECTION 1

. . .nor shall any State deprive any person of life, liberty, or property, without due process of law; . . .

§ 942. Tax lien certificate; procedure

Liens on real estate created by section 552, in addition to other methods established by law, may be enforced in the following manner.

The tax collector may, after the expiration of 8 months and within one year after the date of original commitment of a tax, give to the person against whom said tax is assessed, or leave at his last and usual place of abode, or send by certified mail, return receipt requested, to his last known address, a notice in writing signed by said tax collector or bearing his facsimile signature, stating the amount of such tax, describing the real estate on which the tax is assessed, alleging that a lien is claimed on said real estate to secure the payment of the tax, and demanding the payment of said tax within 10 days after service or mailing of such notice with $1 for said tax collector for making the demand together with the certified mail, return receipt requested, fee. In the case of taxes supplementally assessed, said tax collector may give such notice after the expiration of 8 months and within one year after the date of commitment of such supplementally assessed taxes. If an owner or occupant of real estate to whom said real estate is taxed shall die before such demand is made on him, such demand may be made upon the executor or administrator of his estate or upon any of his heirs or devisees.

After the expiration of said 10 days and within 10 days thereafter, the tax collector shall record in the registry of deeds of the county or registry district where said real estate is situated a tax lien certificate signed by said tax collector or bearing his facsimile signature, setting forth the amount of such tax, a description of the real estate on which the tax is assessed and an allegation that a lien is claimed on said real estate to secure the payment of said tax, that a demand for payment of said tax has been made in accordance with this section, and that said tax remains unpaid. When the undivided real estate of a deceased person has been assessed to his heirs or devisees without designating any of them by name it will be sufficient to record in said registry a tax lien certificate in the name of the heirs or the devisees of said decedent without designating them by name.

At the time of the recording of the tax lien certificate in the registry of deeds, in all cases the tax collector shall file with the municipal treasurer a true copy of the tax lien certificate and shall send by certified mail, return receipt requested, to each record holder of a mortgage on said real estate, to his last known address, a true copy of the tax lien certificate. If the real estate has not been assessed to its record owner, the tax collector shall send by certified mail, return receipt requested, a true copy of the tax lien certificate to the record owner.

The costs to be paid by the taxpayer shall be the sum of the fees for recording and discharge of the lien as established by Title 33, section 751, subsection 10, plus $2 and all certified mail, return receipt requested, fees. Upon redemption, the municipality shall prepare and record a discharge of the tax lien mortgage.

The municipality shall pay the tax collector $1 for the notice, $1 for filing the tax lien certificate and the amount paid for certified mail, return receipt requested, fees. The fees for recording the tax lien certificate and for discharging the tax lien mortgage shall be paid by the municipality to the register of deeds.

R.S.1954, c. 92, § 98; 1955, c. 399, § 1; 1973, c. 536, § 26; 1975, c. 770, §§ 203, 204, eff. April 16, 1976; 1977, c. 422, § 2, eff. June 30, 1977; 1977, c. 479, §§ 17, 18, eff. July 8, 1977; 1977, c. 630, §§ 7, 8, eff. March 9, 1978.

§ 943. Tax lien mortgage; redemption; discharge; foreclosure

The filing of the tax lien certificate in the registry of deeds shall create a tax lien mortgage on said real estate to the municipality in which the real estate is situated having priority over all other mortgages, liens, attachments and encumbrances of any nature, and shall give to said municipality all the rights usually incident to a mortgagee, except that the municipality shall not have any right of possession of said real estate until the right of redemption shall have expired.

The filing of the tax lien certificate in the registry of deeds shall be sufficient notice of the existence of the tax lien mortgage.

In the event that said tax, interest and costs shall be paid within the period of redemption, the municipal treasurer or assignee of record shall prepare and record a discharge of the tax lien mortgage in the same manner as is now provided for the discharge of real estate mortgages.

If the tax lien mortgage, together with interest and costs, shall not be paid within 18 months after the date of the filing of the tax lien certificate in the registry of deeds, the said tax lien mortgage shall be deemed to have been foreclosed and the right of redemption to have expired.

The municipal treasurer shall notify the party named on said tax lien mortgage not more than 45 days nor less than 30 days previous to the foreclosing date of the said tax lien mortgage, in a writing left at his last and usual place of abode or sent by certified mail, return receipt requested, to his last known address of the impending automatic foreclosure, indicating within the notice the exact date of foreclosure. In the event the notice provided in this section has not been given, the party named on said tax lien mortgage shall have the right to redeem said real estate mortgage within 30 days after the said notice.

After the expiration of the 18-month period for redemption, the mortgagee of record of said real estate or his assignee and the owner of record if the said real estate has not been assessed to him or the person claiming under him shall, in the event the notice provided for said mortgagee and said owner has not been given as provided in section 942, have the right to redeem the said real estate within 3 months after receiving actual knowledge of the recording of the tax lien certificate by payment or tender of the amount of the tax lien mortgage, together with interest and costs, and the tax lien mortgage shall then be discharged by the owner thereof in the manner provided.

The tax lien mortgage shall be prima facie evidence in all courts in all proceedings by and against the municipality, its successors and assigns, of the truth of the statements therein and after the period of redemption has expired, of the title of the municipality to the real estate therein described, and of the regularity and validity of all proceedings with reference to the acquisition of title by such tax lien mortgage and the foreclosure thereof.

Whenever the person against whom the tax is assessed shall have died after the tax has been committed and prior to the expiration of the 18-months period of foreclosure and such person shall have left a will offered for probate, the probate judge of the county wherein said will is offered upon petition of any devisee of the real estate on which said tax is unpaid may grant a period of redemption not to exceed 60 days following the final allowance or disallowance of said will. Notice of said petition shall be given to the tax collector of the town wherein said property is located and a certified copy of the court order shall be filed in the registry of deeds of the county wherein the property is located.

A discharge of a municipal tax lien mortgage given after the right of redemption has expired, which discharge has been recorded in the Registry of Deeds more than one year, shall terminate all title of the municipality derived from such tax lien mortgage.

STATEMENT OF THE CASE

Paul and Doris Cummings reside in the home built by Mr. Cummings in the Town of Oakland. They live there with their son, daughter and two (2) grandchildren. Mr. Cummings owned the house and Mrs. Cummings owned the land. The Maine Supreme Judicial Court has sustained a claim by the Town of Oakland that both the house and land were taken by tax lien foreclosure on October 25, 1979 for non-payment of the 1977 real property tax of a total of one hundred eight dollars ($108.00).

The Cummings, like many low-income homeowners, have a history of late payment of property taxes. In the past, the Town of Oakland had always allowed property owners, including the Cummings, to repurchase foreclosed property on payment of back taxes, interest and costs.[1] At a Town Council meeting on November 15, 1979, the Town changed its policy of allowing such repurchases. On November 16, 1979, the Waterville Sentinel reported the change in Oakland's policy regarding repurchase of foreclosed property and the Town's intention to sell the property of Paul and Doris Cummings at a public auction. When Paul Cummings read the Waterville Sentinel on November 16, 1979, he learned for the first time that the Town considered his property tax-acquired. (See Appendix 7). Mr. Cummings immediately went to the Town Office with sufficient funds to pay the taxes owed. The Town refused to allow the Cummings to repurchase their property for the back taxes, interest and costs. The Town also reserved the right to reject any and all bids at public sale, including that of the property owners.

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[1]The Town of Oakland had allowed the Cummings to pay their 1972, 1973, and 1974 taxes on December 31, 1976, January 7, 1977 and January 28, 1977 respectively after the foreclosure date for those taxes.

The acquisition of property by a Maine municipality for non-payment of real property taxes is governed by the provisions of Title 36 M.R.S.A. §§942 and 943 which are set forth above. Title 36 M.R.S.A. §942 provides that when property taxes are not paid, between eight and twelve months after the commitment of the taxes, a Notice of Lien Claim stating the amount of the tax and demanding payment within ten (10) days, is sent to the property owner by certified mail. No mention of foreclosure is included in this Notice. If the taxes are not paid within the ten (10) days, a tax lien mortgage is filed within the next ten (10) days in the Registry of Deeds. The property owner does not receive a copy of the tax lien morggage and is not notified of the date upon which it is filed in the Registry of Deeds. Eighteen (18) months from the date of filing the tax lien mortgage in the Registry of Deeds, the tax lien mortgage is foreclosed. Title 36 M.R.S.A. §943. Not more than 45 days, nor less than 30 days prior to the foreclosure date, the Town must give notice of the date of the impending automatic foreclosure of the tax lien mortgage to the taxpayer. Title 36 M.R.S.A. §943 (fifth paragraph).

In April, 1978, the Cummings received notices that the Town claimed a lien on their home for their 1977 real property tax (see Appendix 4). As in the past, they did not pay the taxes. The next the Cummings heard of the matter was upon reading in the newspaper on November 16,1979, that the tax lien had been foreclosed and that the Town had changed its policy of allowing late payment of back taxes.

The Town had sent to the Cummings, by certified mail, the notice of impending foreclosure as required by Title 36 M.R.S.A. §943, but the notice was returned unclaimed. (See Appendix 5).

The Town knew that the Cummings had no notice of the impending foreclosure of the tax lien mortgage on their home.[2] Despite this knowledge. the Town made no further attempts at notice after the certified mail was returned, although the notice was returned to the Town well before the foreclosure date.

After their attempts to repurchase their home for back taxes, interest and costs had been rebuffed by the Town, the Cummings instituted an action in the Superior Court for Kennebec County. Ultimately unsuccessful in Superior Court, the Cummings appealed to the Maine Supreme Judicial Court claiming that the Town had not complied with the notice provisions of Title 36 M.R.S.A. §943. The Town's knowledge that the Cummings did not receive the notice of impending automatic foreclosure by certified mail and failure to take any other steps to notify them should have precluded the taking of their home because the notice of the impending foreclosure was not reasonably calculated to apprise them that their mortgage would be foreclosed and the right of redemption extinguished on October 25, 1979.[3]

The Law Court held that the due process notice requirements set forth in Mullane v. Central Hanover Bank and Trust Co., 339 U.S. 306 (1950), Covey v. Town of Somers, 351 U.S. 141 (1956), and Robinson v. Hanrahan, 409 U.S. 38 (1972), did not

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[2]The affidavit of Paul Cummings in the record states that he never even received the postal notice that a piece of certified mail had been sent to him. Moreover, had he received the notice, it would not have indicated who the certified letter was from or what its content was. (See Appendix B). The Cummings had no history of avoiding certified mail as evidenced by the fact that they had accepted notices of the lien claims. They had not in the past received a notice of automatic foreclosure so they would have had no reason to think they should avoid receipt of one.

[3]Title 36 M.R.S.A. §943 provides alternative means of giving the required notice. The Maine Court interpreted it to allow either method of notice, not to require notice most likely to apprise the homeowner of the foreclosure.

apply to the notice of automatic foreclosure provided for in Title 36 M.R.S.A. §943. (See Appendix 1). The Court reasoned that the §943 notice was a gratuitous warning provided by the state and therefore was not itself of a constitutional dimension. The rationale for this holding was that the threshold requirement of notice was met by the notice of lien claim received by the Cummings more than eighteen (18) months prior to the foreclosure. The opinion did not consider the adequacy of what was actually contained in that earlier notice, indicating that it had not been challenged. However, it was in the opinion of the Supreme Judicial Court that for the first time, the possibility was raised that the earlier notice of lien claim required by Title 36 M.R.S.A. §942 (whatever its content) might serve to make the notice of foreclosure provided for in Title 36 M.R.S.A. §943 gratuitous.

THE QUESTION PRESENTED IS SUBSTANTIAL

The question of what due process requires for notice prior to a forfeiture of a family's home for delinquent property taxes presents a substantial constitutional question. The question is particularly important to low income property owners like the Cummings who have built their own homes, because real property taxes exact a disproportionate share of their income compared with middle and upper income homeowners.[4] Forfeiture of the home means loss of the family's only significant asset. The question presented by this case is: was there a meaningful notice, given at a meaningful time, in a manner reasonably calculated to apprise the family of the forfeiture of their property. Due process notice is particularly important in a case such as this, where notice of the forfeiture would have led to the prevention of the forfeiture.

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[4]See W. Farr, The Property Tax as an Instrument for Economic and Social Change, 9 Urban Lawyer 447 (1977).

This Court has previously considered the meaning of due process notice requirements in the context of a forfeiture of one's home for delinquent taxes in Covey v. Town of Somers, supra. What has not been directly considered by this Court is whether receipt of a notice of claim of a tax lien as required by Title 36 M.R.S.A. §942, more than eighteen (18) months prior to the taking of the property, is sufficient to cure constitutional defects in the notice of actual foreclosure as required by Title 36 M.R.S.A. §943.

The notice which Mr. and Mrs. Cummings actually received did not contain any mention of the fact that foreclosure of the lien mortgage would result in a forfeiture of their home. In fact, it made no mention of foreclosure whatsoever. It certainly did not give notice of the date of foreclosure to which Section 943 gave a statutory entitlement. The notice received made no mention of a right of redemption, or how it might be exercised, or when. It gave no notice of when such a right would be extinguished, or how. That earlier notice was merely notice of the claim of a tax lien. It was not notice of the event that had the operative effect of divesting the Cummings of their home.

The fifth paragraph of Title 36 M.R.S.A. §943 provides:

> The municipal treasurer shall notify the party named on said tax lien mortgage not more than 45 days nor less than 30 days previous to the foreclosing date of the said tax lien morggage, in a writing left at his last and usual place of abode or sent by certified mail, return receipt requested, to his last known address of the impending automatic foreclosure, indicating within the notice the exact date of foreclosure. In the event the notice provided in this section has not been given, the party named on said tax lien mortgage shall have within 30 days after the said notice. (emphasis added).

At the time the Cummings should have received the notice referred to above, they still had a substantial property interest in their home. The taking of the property does not occur until the right of redemption has expired.[5] Maine recognizes that a right of redemption is a property interest which entitles one to due process protections. Martel v. Bearce, 311 A2d 540 (Me. 1973); Title 36 M.R.S.A. §943. The question in this case is whether the Town of Oakland gave the Cummings notice reasonably calculated to apprise them of their right of redemption and the possibility of forfeiture of their property.

The means of giving the notice, as well as its content, must comply with due process standards. It must be reasonably calculated to apprise the property owner that his rights are going to be affected. Thus, notice to a person known by Town officials to be incompetent is insufficient notice. Covey v. Town of Somers, supra. Notice mailed to an address known to be incorrect is insufficient, even though that may be what is required by statute. Robinson v. Hanrahan, supra. Notice of tax foreclosure mailed to the address of the taxed property is insufficient when the taxpayer's address is different and known by the municipal officials to be different from the subject property. In Re Foreclosure of Liens for Delinquent Taxes, 405 NE2d 1030, (Ohio, 1980). Notice of foreclosure only by publication is insufficient. Township of Montville v. Block 69, Lot 10, 376 A2d 909, 74 NJ 1 (1977).

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[5]This court recognized in Chapman v. Zobelin, 237 U.S. 135, 138 (1915) that the right of redemption furnishes relief for those who, "for want of ability to pay, or for lack of notice of (tax) levy, might otherwise be deprived of their property."

This Court, as well as the highest courts of other jurisdictions, has looked at the content of tax notices received in determining whether due process has been afforded the delinquent taxpayer. Chapman v. Zobelin, supra, (notice received contained time and place property would be sold and notice of right to redeem thus satisfying due process); Municipality of Anchorage v. Wallace, 597 P2d 148 (AK, 1979) (found violation of due process because no notice was given of intent to use land for public purpose after right of redemption had expired); Township of Montville v. Block 69, Lot 10, supra, (notice of expiration of right of redemption must be given by means other than publication in order to satisfy due process).

No court has been unmindful of potential burdens on a municipality caused by personal notice of foreclusre to taxpayers. In Township of Montville, supra, the New Jersey court referred to this Court's decisions in Mathews v. Eldridge, 424 U.S. 319, 333, 96 S.Ct. 893, 47 L.Ed.2d 18, 32 (1976), and Bell v. Burson 402 U.S. 535, 91 S.Ct. 1586, 29 L. Ed. 2d 90 (1971), requiring a balancing of the interests of the governmental entity and the individual whose rights are affected in determining what process is due. The New Jersey Court held that the burden imposed by requiring personal notice hardly outweighed an individual's interest in retaining possession of a home which may have been purchased with a lifetime's worth of earnings. Township of Montville, supra, at 918.[6] Never at any stage of this proceeding has it been suggested by the Town that giving the Cummings notice would have created any burden.[7]

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[6]See also, Goldberg v. Kelly, 397 U.S. 254 (1970).

[7]Compare Nelson v. City of New York, 352 U.S. 103 (1956).

The Town acknowledged at the hearing in Superior Court that it knew the Cummings received no notice of the foreclosure of the lien well before the date of the scheduled foreclosure.

The interest of the Cummings in this case is clearly substantial. It is their home, a home built by Mr. Cummings himself. It is their residence and that of their children and grandchildren. Maine, like nearly every state in the Union, recognizes the importance of a family's interest in its homestead by affording it extra protection from loss through its homestead exemption statute.[8] Likewise this Court has recognized the particular importance a family has in owning its own home.[9] Certainly a decision which accords that interest less due process protection than that accorded a prisoner in his automobile raises a substantial federal question.[10]

Tax lien foreclosure proceedings most frequently affect poor people - that class to whom the property interest in their homestead is most important and most difficult to replace. This is also the class of people most likely to be confused by inadequate or poorly drafted notices. The decision of the Maine Court adversely affects the interests of the extensive class of people who most greatly require the protections of due process. This interest, and its need for protection, is clearly substantial.

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[8] 14 M.R.S.A. §4551.

[9] Shelley v. Kraemer, 334 U.S. 1, 68 S.Ct. 836, 92 L.Ed. 1161 (1948).

[10] Robinson v. Hanrahan, supra,

Forfeiture of a family's home is an interest which must surely be afforded greater due process protection than the collection of money judgments.[11] Here the Town seeks to take the entire family homestead, not merely enough to satisfy its claim for taxes, interest and costs. The Town has been offered all it is due to make it whole, and has refused to accept the offer. Meaningful notice of the family's rights and duties could have prevented the forfeiture.

CONCLUSION

For these reasons, this Court should note probable jurisdiction of this appeal.

Respectfully Submitted,

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[11] Fuentes v. Shevin, 407 U.S. 67 (1972).

APPENDIX 1

Decision of the Maine Supreme Judicial Court sitting as the Law Court.

MAINE SUPREME JUDICIAL COURT

Reporter of Decisions
Decision No. 2600
Law Docket No. Ken-80-15

PAUL CUMMINGS

and

DORIS CUMMINGS

v.

TOWN OF OAKLAND

Argued September 17, 1980
Decided June 10, 1981

Before WERNICK, GODFREY, NICHOLS, GLASSMAN*, ROBERTS, and CARTER, JJ., and DUFRESNE, A.R.J.

CARTER, J.

The plaintiffs, Paul and Doris Cummings, live in Oakland. Prior to October 25, 1979, the plaintiffs owned their home, Mrs. Cummings having title to the land on which the home was situated and Mr. Cummings having title to the residence building. The plaintiffs did not pay their 1977 property taxes which totaled One Hundred Eight Dollars ($108.00). On April 10, 1978, the defendant, Town of Oakland, sent by certified mail the notice required by 36 M.R.S.A. § 942,[1] return receipt requested, to each

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* Glassman, J., concurred in this decision prior to his death.

1. In 1978, 36 M.R.S.A. § 942 provided in pertinent part:

> The tax collector may, after the expiration of 8 months and within one year after the date of original commitment of a tax, give to the person against whom said tax is assessed, or leave at his last and usual place of abode, or send by certified mail, return receipt requested, to his last known address, a notice in writing signed by said tax collector or bearing his facsimile signature, stating the amount of such tax, describing the real estate on which the tax is assessed, alleging that a lien is claimed on said real estate to secure the payment of the tax, and demanding the payment of said tax within 10 days after service or mailing of such notice ....

plaintiff stating that a lien on the property was claimed for unpaid taxes. These notices were received and signed for by the plaintiffs on April 11, 1978. On April 24, 1978, the defendant filed a tax lien on each plaintiff's property in the Kennebec County Registry of Deeds, thereby creating tax lien mortgages on the property and commencing the running of the plaintiffs' 18-month redemption period pursuant to 36 M.R.S.A. § 943. The filing of the lien constituted by the specific terminology of § 943 notice "of the existence of the tax lien mortgage."[2]

On September 20, 1979, the defendant sent the additional notice required by the fifth paragraph of § 943,[3] also by certified mail, return receipt requested, to each plaintiff, using the same address as the defendant had used on April 10, 1978, on Doris Cummings' letter. The notice to each plaintiff stated that a

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2. 36 M.R.S.A. § 943 provides in pertinent part:

> The filing of the tax lien certificate in the registry of deeds shall create a tax lien mortgage on said real estate to the municipality in which the real estate is situated having priority over all other mortgages, liens, attachments and encumbrances of any nature, and shall give to said municipality all the rights usually incident to a mortgagee, except that the municipality shall not have any right of possession of said real estate until the right of redemption shall have expired.
>
> The filing of the tax lien certificate in the registry of deeds shall be sufficient notice of the existence of the tax lien mortgage.
>
> ...
>
> If the tax lien mortgage, together with interest and costs, shall not be paid within 18 months after the date of the filing of the tax lien certificate in the registry of deeds, the said tax lien mortgage shall be deemed to have been foreclosed and the right of redemption to have expired.

3. This is the so-called notice of "impending automatic foreclosure."

tax lien had been filed on April 25, 1978, on the addressee's property, and that on October 25, 1979, the resulting tax lien mortgage would be deemed to have been foreclosed and the right of redemption to have expired if the tax was left unpaid. These two letters were returned to the defendant marked "unclaimed." The postal markings on the return envelopes indicate that the postal service gave "first notice" on September 21, 1979, "second notice" on September 26, 1979, and returned the letters on October 5, 1979. The defendant made no further attempt to notify the plaintiffs of the impending automatic foreclosure.

On November 16, 1979, the plaintiffs learned from reading a newspaper article that the defendant, considering the plaintiffs' home to have been tax-acquired by the defendant, had decided to sell the home. Paul Cummings then offered to pay the amount secured by the 1977 tax liens, but the defendant refused to accept payment. Thereupon, the plaintiffs brought this action seeking an injunction to prevent the sale of their home and to compel the defendant to accept payment of their 1977 property tax plus interest and costs.

The plaintiffs claim that the foregoing procedures were insufficient under the statute to accomplish an expiration of the statutory right of redemption and to thereby vest full title in the municipality. This claim is based on two contentions: (1) that § 943 requires that the property owner be given "actual notice" of the "impending automatic foreclosure," and (2) that the notice given under § 943 of "impending automatic foreclosure" did not meet due process standards because, when the

defendants received knowledge that the first notice did not reach the plaintiffs, the defendant did not further attempt to communicate the notice by "a writing left at ... [their] last and usual place of abode."

I.

The tax lien statute was first enacted by Public Laws, 1933, Chap. 244. It was intended to provide a method, in addition to those already in existence,[4] "for the enforcement of liens on real estate" created by the assessment of taxes under other pertinent provisions of statutory law. Town of Warren v. Norwood, 138 Me. 180, 182, 24 A.2d 229, 231 (1941). It has since undergone a series of amendments aimed at expanding its scope and simplifying its applicability.

Before 1973, the statute provided by § 942 for the giving of notice to the property owner of the claim of a lien for unpaid taxes. This section provided, in general, for notice by certified mail alleging that a lien is claimed on described property for payment of the tax specified therein and demanding payment of the tax. 36 M.R.S.A. § 942. This notice must be served or mailed at least 10 days before the tax lien certificate is filed in the Registry of Deeds. Filing of the certificate "shall be sufficient notice of the existence of the tax lien mortgage." 36 M.R.S.A. § 943.

Until the 1973 amendment, no further notice to the property owner was required by the statute in order to lay the foundation

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4. See, e.g. R.S. 1930 c. 14 §§ 28, 95.

to achieve a forfeiture of the realty if the taxes were not paid within 18 months of the recording of the tax lien certificate. This court has upheld the sufficiency of that notice provision as against resident property owners in the face of attacks based on due process of law. Norwood, 138 Me. at 197-201, 24 A.2d 237-39; City of Auburn v. Mandarelli, Me., 320 A.2d 22, 30 (1974). On the other hand, we have invalidated, for failure to meet due process requirements, the enforcement of the Act to accomplish a forfeiture of a non-resident property owner's interest in realty at a time when the Act failed to provide for the giving of notice to a non-resident of the claim of a tax lien on his property and no such notice was, in fact, given. Kramer v. Inhabitants of Linneus, 144 Me. 239, 67 A.2d 536 (1949).

Here it is agreed that the notice required by § 942 was sent to the plaintiffs, and was received. The plaintiffs do not challenge the sufficiency of the § 942 notice. It is likewise established that the tax lien certificate was filed in the Registry of Deeds in accordance with § 943.

The plaintiffs' challenge relates to the notice required under the fifth paragraph of § 943. This portion of the statute came into being by the 1973 amendment. It originally provided:

> The municipal treasurer shall notify the party named on said tax lien mortgage not more than 45 days nor less than 30 days previous to the foreclosing date of the said tax lien mortgage, in writing by registered or certified mail, of the impending automatic foreclosure, indicating within the notice the exact date of foreclosure. In the event the notice provided in this section has not been given, the party named on said tax lien mortgage shall have the right to redeem said real estate mortgage within 30 days after the said notice.

P.L. 1973, c. 368.

The first sentence of this provision was further amended in 1975 to read as follows:

> The municipal treasurer shall notify the party named on said tax lien mortgage not more than 45 days nor less than 30 days previous to the foreclosing date of the said tax lien mortgage, in a writing left at his last and usual place of abode or sent by registered or certified mail, to his last known address of the impending automatic foreclosure, indicating within the notice the exact date of foreclosure.

P.L. 1975, c. 770, § 205.

The plaintiffs' first contention is that the language of this paragraph as it stood after the 1975 amendment requires that the property owner receive "actual notice" of the impending automatic foreclosure; that is, that the property owner retains the right to the additional 30 day period of redemption until receipt of notice of the impending foreclosure. We do not so construe the statutory language.

A statute is to be construed to give effect to the intent of the legislature in enacting it. Mundy v. Simmons, Me., 424 A.2d 135, 137 (1980); Town of Arundel v. Swain, Me., 374 A.2d 317, 319 (1977). A proper construction of the statutory language can be found only in the light of legislative purpose as represented by the total statutory scheme for creation and enforcement of tax lien mortgages. See In re Belgrade Shores, Inc., Me., 359 A.2d 59, 61 (1976). Legislative intent can be gathered from the language of the provision in question. Here the operative language is that "[t]he municipal treasurer shall notify the party named ... in a writing left at his last and usual place of abode or sent by registered or certified mail, to his last known address...." (emphasis added).

The words "shall notify" taken by themselves, may in some contexts import a requirement of actual notice or receipt of notice by the person to whom notice is to be given. Such import is negatived, however, where other language specifies the manner in which the notice is to be given. In such context, the clear intent of the language is that utilization of the notice mechanism provided for in the statute satisfies the statutory requirement of the giving of notice. In short, if the municipality sends the notice by one of the methods prescribed by the statute, it has given notice within the contemplation of the statute.

This construction is supported by the fact that the statutory language at no point refers to receipt of the notice by the property owner or to acquisition of "actual knowledge" by the property owner. In fact, the second sentence of the provision in question, which creates the additional thirty day period of redemption, does not speak in terms of the receipt of the notice provided for in the first sentence. Rather, it states that "[i]n the event the notice provided in this section has not been given, the party ... shall have the right to redeem ... within 30 days after the said notice." (emphasis added). It would have been a simple matter to make it positively clear that actual notice was required, if that were the legislative intent, by using the word "received" in place of "given" in this sentence. The technique of providing for the giving of notice by one of two alternative methods coupled with an enlarged period of redemption which comes into existence only in the event the notice

is not given shows a clear legislative intent to require the use of the methods prescribed by the statute to give the notice. It does not show an intent that more be required than the sending of the notice in order to permit final foreclosure of the lien and the consequent ripening of title in the municipality.

The provisions of the sixth paragraph of § 943 demonstrate that the legislature knows how to draft a statute so as to require the actual communication of the content of a notice in the tax mortgage lien certificate situation. That provision ties the running of the three-month period of redemption available to a mortgagee of record who does not receive the notice required by the fourth paragraph of § 942, to such mortgagee's acquisition of "actual knowledge" of the recording of the tax lien certificate.[5] So clear a differentiation of the standard

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5. The sixth paragraph of 36 M.R.S.A. § 943 states:

> After the expiration of the 18-month period of redemption, the mortgagee of record of said real estate or his assignee and the owner of record if the said real estate has not been assessed to him or the person claiming under him shall, in the event the notice provided for said mortgagee and said owner has not been given as provided in section 942, have the right to redeem the said real estate within 3 months after receiving actual knowledge of the recording of the tax lien certificate by payment or tender of the amount of the tax lien mortgage, together with interest and costs, and the tax lien mortgage shall then be discharged by the owner thereof in the manner provided.

A similar standard of notice is provided for in 36 M.R.S.A. § 1076 requiring the purchaser at sale to give notice after purchase at the tax collector's sale to the holder of an undischarged mortgage of record.

of notice from the requirement of knowledge occurring within the same statute compels the conclusion that where the legislature speaks in terms only of the giving of notice, it did not intend to require actual receipt of the notice or actual communication of its contents as a precondition of the expiration of the period of redemption.

This construction of the language of the statute is supported by the legislative history of P.L. 1973, c. 368 and of P.L. 1975, c. 770 § 205, which enacted the fifth paragraph of § 943 in its present form. The original bill introduced into the 106th Legislature (L.D. 722) read as follows:

> AN ACT Relating to Nature of Foreclosure of Tax Lien Mortgages.
>
> Be it enacted by the People of the State of Maine, as follows:
>
> R.S., T.36, § 943, amended. Section 943, of Title 36 of the Revised Statutes is amended by adding after the 4th paragraph a new paragraph to read as follows:
>
> The municipal treasurer shall notify the party named on said tax lien mortgage not more than 45 days nor less than 30 days previous to the foreclosing date of the said tax lien mortgage, in writing, of the impending automatic foreclosure, indicating within the notice the exact date of foreclosure.

In the legislative debate on this bill, Senator Fortier raised the problem that in its then form the provision could create another opportunity for beclouding tax titles to the detriment of the municipality if the notice were not given. He said:

> However, there is a technical problem in the way the original bill was written in that it would be possible, if the municipal treasurer neglected, inadvertently or otherwise, to send this notice, that the municipality could lose its equity in the lien. I do not think there is anywhere in the tax lien law provisions

> whereby a town official could jeopardize the equity of a municipality. This would simply require that, in case such a notice was not properly sent, the taxpayer would have another 30-day notice from the time that he was properly notified,[6] so it would not jeopardize the equity of the municipality.

2 Me. Leg. Rec. 2464 (1973) (emphasis added). In short, he did not want failure to give the notice of impending foreclosure to be a legal basis to prevent the ripening of title in the municipality by the completion of the foreclosure. The avoidance of this result was accomplished by the addition of the second sentence to the amendment: "In the event the notice provided in this section has not been given, the party named on said tax lien mortgage shall have the right to redeem said real estate mortgage within 30 days after the said notice." (emphasis added). The clear purpose of the Act was to require the giving of the notice. It was not intended, in any event, that the rights of the municipality under the lien should be cut off. The Senator made it clear that the property owner was to have the benefit of an additional thirty day period for redemption "in case such a notice was not properly sent." 2 Me. Leg. Rec., supra. (emphasis added).

Thus, we find that the legislative intent was to provide that notice of impending foreclosure be given in the period between 45 to 30 days prior to the end of the 18-month foreclosure period. The Legislature intended to require, if the municipal officials failed to give the notice in a timely

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6. In the full context of these remarks, we believe that "he was properly notified" should be read as "a notice was properly sent."

fashion, that they do so to perfect the municipality's acquisition of title. To that end, the property owner was afforded a thirty day period of redemption from the time that the municipal officials in fact sent the notice by one of the methods specifically provided for in the statutory language.

II.

We next address the plaintiffs' claim of an unconstitutional application of the statute in this case. We do not understand the plaintiffs to make a facial attack upon the constitutional propriety of the statute as it stood after the 1975 amendment.[7] Rather, the contention is that the town violated the plaintiffs' due process rights by failing to attempt personal service of the § 943 notice after learning that the plaintiffs had not received the notice sent by certified mail. Because the town did not attempt to give the notice by the alternative statutory method of personal service, plaintiffs contend it violated the principles enunciated in Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950); Covey v. Town of Somers, 351 U.S. 141 (1956) and Robinson v. Hanrahan, 409 U.S. 38 (1972). The fundamental principle underlying the holdings in these cases is one of fairness: where an initial notice intended to affect constitutional rights is required, it cannot be given by methods or under circumstances which the giver of notice could reasonably anticipate will be

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7. The plaintiffs' Complaint alleged that without giving prior notice the town instituted a new policy on tax lien foreclosures in violation of the plaintiffs' due process rights. This issue was neither perfected at trial, nor raised on appeal.

ineffective in communicating knowledge to the person or entity entitled to receive the notice. The principle is articulated in Mullane in this language:

> The notice must be of such nature as reasonably to convey the required information,.... ...The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it.

339 U.S. at 314-15. In Mullane, the Court said that this principle was violated because the bank in settling a trust gave the required notice by publication when it had access to a list of names and addresses of those whose rights were directly affected by the content of the notice. In Covey, the Court again found a violation of the constitutional standard where a notice of tax foreclosure was sent and received by a property owner known to be incompetent by the town officials responsible for giving the notice. In Robinson, the violation occurred because the notice of State foreclosure on personal property was given by certified mail to an owner's address as listed in the records of the Secretary of State (as prescribed by statute), but at a time when the State officials knew that the property owner was not at that address because he was in the custody of the State as a prison inmate.

However, those cases, and the factual foundations present in each for the application of the principle of "fundamental fairness" as a constituent element of due process of law, are all to be distinguished from the case at bar. First of all, in each of them, the notice in question was the initial notice of the forthcoming diminishment of a property interest by

governmental action. The property owners in those cases had not had any prior notice of such governmental action and would not receive any notice other than the one then in controversy. Thus, failing the receipt of that notice, the property owner would not be given any notice of the forthcoming action.

Such is not the fact in this case. It is undisputed that the town gave to the plaintiffs and that they received the § 942 notice stating that a lien was claimed on the premises for the 1977 property taxes of One Hundred Eight Dollars ($108.00). These notices fully complied with due process notice requirements with respect to the claim of the lien and the possibility of a forfeiture of the subject property by its foreclosure. Town of Warren v. Norwood, 138 Me. 180, 24 A.2d 229 (1941); City of Auburn v. Mandarelli, Me., 320 A.2d 22 (1974). Upon receipt of these notices, the plaintiffs were legally on notice of the town's claim of a lien against the premises and of the potential loss of their title to the premises through forfeiture if the taxes were not paid within the ensuing 18 months. The effect of that notice was to place the burden upon the plaintiffs to pay the taxes within 18 months in order to avoid the forfeiture.

The due process notice requirement imposed by Mullane, Covey, and Robinson is a threshold constitutional requirement to assure that the government does not appropriate private property interests without first taking reasonable steps to assure that the property owner is aware of both the danger of the loss of his interest and of the opportunity to avoid the forfeiture by performance of the acts necessary to that end. Once that threshold requirement has

been met, the opportunity to avoid the forfeiture is available to the property owner and the burden reposes fully on him to do so by appropriate action. He is not entitled to receive, and the town is not obliged to give, any further notice of the impending danger to his interest in the property. The provision of that opportunity meets fully the constitutional requirement.

Where the state gratuitously provides by statute for an additional warning by notice of "impending automatic foreclosure" as was done here, that second notice is not itself of constitutional magnitude so long as it is given in a nondiscriminatory manner to all persons similarly situated.[8] The threshold requirement of notice has previously been met, and the property owners here have had for many months both actual notice of the lien and the continuing opportunity to act to avoid the impending foreclosure. The giving of the § 943 notice is not necessary to meet the threshold requirement and is not intended to do so. Not being a notice necessary to the protection of constitutional rights it need not comply with the strictures imposed upon notices that have direct impact upon constitutional rights.

Plaintiffs here point out that the statute provided for two methods of giving the § 943 notice to the property owner, one of which, certified mail, the town utilized. They argue that a violation of the Mullane concept of notice occurred because as a result of the certified mail notice the town

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8. No argument is here advanced that the town violated any aspect of equal protection of the laws by the manner or circumstances under which it gave the § 943 notice of "impending automatic foreclosure." Nor is there any evidence in the record indicating such a violation.

became aware that the notice had not, in fact, been received, but took no further action to accomplish the giving of the notice by the alternate statutory method of personal service.[9]

This argument must fail for it is based upon the erroneous assumption that the notice is of constitutional magnitude. Since the § 943 notice is not necessary in this statutory scheme to meet the threshold notice requirements of due process, it need only be given as allowed by statute on a basis that is not arbitrarily discriminatory against individual property owners or classes of property owners. Hence, the town was allowed, so far as constitutional requirements are concerned, to choose either method prescribed by the statute for the giving of the § 943 notice to the plaintiffs. It appears from the record made in this case that that choice and the execution of the giving of the notice by the chosen method were not intended to and did not, in fact, work any invidious discrimination against plaintiffs or their property interests. That being so, there was no constitutional defect in the notice here given by the town.

The entry is:

Judgment affirmed.

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9. No assertion is made that the town deliberately chose one of the statutory methods of notice knowing that it was less likely to result in the communication of the notice to the plaintiffs than was the other available method. There is no evidence in the record before us to support such an assertion.

All concurring.

Attorney for the Plaintiffs:
Martha E. Geores, Esq. (orally)
Pine Tree Legal Assistance, Inc.
39 Green Street
P. O. Box 2429
Augusta, Maine 04330

Attorney for the Defendant:
Daviau, Jabar & Batten
By: John P. Jabar, Esq.
1 Center Street
Waterville, Maine 04901

NOTICE: This opinion is subject to formal revision before publication in the Maine Reporter. Readers are requested to notify the Reporter of Decisions, Box 368, Portland, Me. 04112, of any typographical or other formal errors before the opinion goes to press.

APPENDIX 2

Decision of the Maine Superior Court in Kennebec County.

Pine Tree Legal Assistance, Inc.
RECEIVED JAN 3 P12?

STATE OF MAINE
KENNEBEC, SS

SUPERIOR COURT
CIVIL ACTION
Docket No. CV79-716

PAUL and DORIS CUMMINGS,
Plaintiffs

v.

TOWN OF OAKLAND,
Defendant

FINDINGS AND ORDER

Plaintiffs, Paul and Doris Cummings, brought this action seeking a preliminary and permanent injunction to prevent the sale of their home by the Town of Oakland as tax acquired property and to compel the Town of Oakland to accept full payment of their 1977 Real Property Tax plus interest and costs.

Paul and Doris Cummings owned land and buildings located on the Hussey Hill Road in the Town of Oakland. They did not pay their 1977 property tax. A tax lien certificate was filed in the Kennebec County Registry of Deeds and Plaintiffs received proper notice of said filing. The Town of Oakland sent two notices of the expiration of the 18 month period of redemption by certified mail, return receipt requested to Plaintiffs last known address. The notices were not claimed by Plaintiffs and returned to the Town Office on October 5, 1979. Plaintiffs received actual notice of the automatic lien foreclosure on November 16, 1979 by reading a newspaper article in the Morning Sentinel. Subsequently, Plaintiffs offered to pay their 1977 property tax, but the Town refused the offer, instead requesting an amount equal to 1977, 1978, 1979 taxes on the property plus interest and costs.

The issue presented is whether the Town has complied with the notice requirements of 36 M.R.S.A. §943 and thereby completed a valid automatic foreclosure as of October 25, 1979.

Plaintiffs argue that adequate notice was not provided, and pursuant to 36 M.R.S.A. §943, they were entitled to redeem the real estate mortgage within 30 days after they were properly notified.

36 M.R.S.A. §943 provides:

> "The municipal treasurer shall notify the party named on said tax lien mortgage not more than 45 days nor less than 30 days previous to the foreclosing date on the said tax lien mortgage in a writing left at his last and usual place of abode or sent by certified mail, return receipt requested, to his last known address of the impending automatic foreclosure, indicating within the notice the exact date of foreclosure. In the event the notice provided in this section has not been given, the party named on said tax lien mortgage shall have the right to redeem said real estate mortgage within 30 days after the said notice." (emphasis added).

This statute is clear on its face. By sending a writing to Plaintiffs' last known address by certified mail, return receipt requested, the notice requirements of the statute have been met. The Law Court has stated:

> "Due process of law in the field of taxation does not require the same kind of notice as is required in the case of judicial actions or even in proceedings for taking private property under the power of eminent domain. The very existence of government necessitates that the tax collection process be not subject to the delays attendant upon formal judicial proceedings." City of Auburn v. Mandarelli, Me. 320 A.2d 22, 29 (1974).

While the Court may sympathize with Plaintiffs for having suffered forfeitur the statute has been complied with and the Court is not free to alter or invalidate its provisions. Since proper notice was made, Plaintiff was not entitled to an additional 30 days to redeem the real estate mortgage. Upon the expiration of the period of redemption, the Plaintiffs lost all rights in the property and the Town's title became absolute. The Town is under no obligation to accept Plaintiffs subsequent offer to pay his 1977 taxes. See: City of Auburn v. Mandarelli, supra, at 32.

The entry shall be:

Judgement is, and hereby shall be, in favor of Defendant and against Plaintiffs.

Dated: December 27, 1979

LEWIS I. NAIMAN
JUSTICE, SUPERIOR COURT

A TRUE COPY:
ATTEST:
By VALERIE PAGE

APPENDIX 3

Notice of appeal.

FILED
JULY 30, 1981

IN THE SUPREME JUDICIAL COURT
OF THE STATE OF MAINE
SITTING AS THE LAW COURT

PAUL and DORIS CUMMINGS,	)	
	)	
Appellants	)	
	)	
-vs-	)	NO. Ken. 80-15
	)	
TOWN OF OAKLAND,	)	
	)	
Appellee.	)	
	)	

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Paul and Doris Cummings, the appellants above named, hereby appeal to the Supreme Court of the United States from the final judgment of the Supreme Judicial Court of the State of Maine, sitting as the Law Court, entered in this action on June 10, 1981, affirming the denial of injunctive relief.

This appeal is taken pursuant to 28 U.S.C. §1257(2).

Dated: July 29, 1981

/s/ Hugh Calkins
Hugh Calkins
Counsel for Appellants

STATE OF MAINE

Kennebec, SS.

I, Hugh Calkins, a member of the Bar of the Supreme Court of the United States hereby certify that on this 29th day of July, copies of this Notice of Appeal were mailed, postage prepaid to the Attorney General of the State of Maine, Augusta, Maine, and to John Jabar, Esquire, One Center Street, Waterville, Maine 04901, counsel for the Appellee Town of Oakland.

I further certify that all parties required to be served have been served.

Dated: July 29, 1981

/s/ Hugh Calkins
Hugh Calkins
Attorney for Appellants

Address: Pine Tree Legal Assistance, Inc.
61 Main Street
Bangor, Maine 04401
Tele: 207-942-8241

APPENDIX 4

Title 36 M.R.S.A. §942 Notice.

Notice received by Doris Cummings. A similar notice was received by Mr. Cummings and is part of the record.

(To be given to delinquent taxpayer)

TAX COLLECTOR'S NOTICE, LIEN CLAIM AND DEMAND TO OWNER OR TENANT IN POSSESSION OR EXECUTOR, ADMINISTRATOR, HEIRS OR DEVISEES OF OWNER OR TENANT IN POSSESSION WHEN OWNER OR TENANT IN POSSESSION HAS DIED AFTER ASSESSMENT BUT BEFORE NOTICE

(Title 36, M. R. S. A., Sections 942 and 943, as amended)

State of Maine

To Doris T. Cummings

RFD # 2

Oakland, Maine 04963

I, Eric S. Meserve, Tax Collector of the Municipality of OAKLAND, in the County of Kennebec

said taxes having been duly and legally committed to me for collection on the

day of AUG 5 1977, 19....., hereby give you this notice that a tax of

thirty-six dollars and no cents,

duly and legally assessed to real estate in said Municipality, and assessed against

Doris T. Cummings, as owner—[redacted] thereof,

said real estate being bounded and described as follows:

Land Hussey Hill Road. Map 006 Lot 002A.

Being the same premises as recorded in Book 1603, Page 061 at Kennebec

County Registry of Deeds in Augusta, Maine.

Pine Tree Line No. T372. Marks Printing House, Portland, Me.

†together with interest of two dollars and fifty cents, which has been added to and become a part of said tax,† and also one dollar to this officer for making this demand, together with the certified mail, return receipt requested fee of ..... dollars and $.98 cents, a total of forty dollars and forty-eight cents, remains unpaid; that a lien is claimed on said real estate, above described, to secure the payment of the said tax; THAT PAYMENT OF THE SAID TAX AND COSTS IS HEREBY DEMANDED OF YOU WITHIN TEN DAYS FROM THE DATE OF THESE PRESENTS, WHICH IS THE DATE OF [redacted]—MAILING†† OF THIS NOTICE.

Dated at said OAKLAND this APRIL 1978

day of ....., 19.....

Eric S. Meserve

Tax Collector

Municipality of OAKLAND

* Strike out "tenant in possession" where assessed to "owner" and vice versa.

† If Municipality did not vote interest, strike out text between daggers. Title 36, M. R. S. A., Section 505, as amended.

†† Where served, strike out (mailing) and vice versa.

SUGGESTION TO COLLECTOR: Make written record of time of service of Tax Collector's Notice No. T372, and of recording No. T373 in Registry of Deeds, and of filing No. T374 with Municipality Treasurer, and of mailing No. T373A by certified mail, return receipt requested, to Mortgage Holders and of mailing No. T373B by certified mail, return receipt requested, to each unsecured Record Owner. If copies are made and facts noted on each copy, you will have useful records of compliance with the Statutes.

Revised 3 78

APPENDIX 5

Title 36 M.R.S.A. §943 Notice.

Notice was not received by Doris Cummings.

A similar notice was not received by Paul Cummings.

State of Maine.

NOTICE OF IMPENDING AUTOMATIC FORECLOSURE

Title 36, M. R. S. A. Section 943

TO: **Doris T. Cummings**

You are the party named on a tax lien certificate filed on **April 25,** 19**78**, and recorded in Book **2096**, Page **320** in the **Kennebec** County Registry of Deeds which filing has created a tax lien mortgage on the real estate described therein.

On **October 25,** , 19**79**, said tax lien mortgage shall be deemed to have been foreclosed and the right of redemption to have expired unless the tax lien mortgage, together with interest and costs, is first paid.

Municipal Treasurer

Doris T. Cummings
RFD #2
Oakland, Maine 04963

.15
.80
.45
1.40

This notice to be left at the last and usual place of abode or sent by registered or certified mail to last known address not more than 45 days nor less than 30 days previous to the automatic foreclosing date. Otherwise, the party named has 30 days, after this notice is given, to redeem said real estate mortgage.

Form 1000 Line. T 370 A
Maine Printing House, Portland, Me.

APPENDIX 6

Tax Lien Certificate.

(To be filed with Municipal Treasurer)

A TRUE COPY OF TAX COLLECTOR'S LIEN CERTIFICATE (Title 36, M. R. S. A., Section 942, as amended)

NOTE: To be filed by Collector with Municipal Treasurer at time of recording lien certificate (Form T373) in registry of deeds.

State of Maine

I, ... , Tax Collector of the Municipality of OAKLAND, in the County of [illegible], said taxes having been duly and legally committed to me for collection on the ..... day of AUG 1977, 19 , hereby certify that a tax of thirty-six dollars and no cents, duly and legally assessed to real estate in said Municipality, and assessed against Doris T. Cummings of RFD #2, Oakland, Maine 04963, as owner—[redacted] thereof, said real estate being bounded and described as follows:

Land Hussey Hill Road Map 006 Lot 002A
Being the same premises as recorded in Book 1603, Page 861 at Kennebec County Registry of Deeds, Augusta, Maine 04330

†together with interest of two dollars and fifty cents, which has been added to and become a part of said tax, [redacted] a total of thirty-eight dollars and fifty cents, remains unpaid; that a lien is claimed on said real estate, above described, to secure the payment of the said tax; that a demand for payment of said tax has been made of the said Doris T. Cummings, [redacted], by my sending by registered mail to his last known place of abode at RFD #2, Oakland, Maine 04963, on the APR 10 1978 day of , 19 , a notice in writing signed by me stating the amount of said tax, describing the real estate on which said tax is assessed, alleging that a lien is claimed on said real estate to secure the payment of said tax, and demanding payment of said tax and costs within 10 days after ††service—mailing†† of said notice, in accordance with the provisions of Title 36, M. R. S. A., Sections 942 and 943, as amended.

Additional Costs:	$2.00
Filing, Recording and Discharging Lien,	$6.00
Registered Mail, true copies,	$ .78
Total	$ 8.78

Tax Collector

Municipality of OAKLAND

STATE OF MAINE

Kennebec, ss. APR 24 1978, 19

Then personally appeared the above subscribed , Tax Collector, and acknowledged the foregoing instrument to be his free act and deed in his said capacity.

Before me, ...
Notary Public. [redacted]
DOREEN A. MORRISON
NOTARY PUBLIC
MY COMMISSION EXPIRES [redacted]

To the Treasurer, Municipality of OAKLAND, Maine.

The foregoing is a true copy of a certificate recorded by me this ..... day of APR 24 1978, 19 , in the Registry of Deeds for the County of [illegible], Maine

Tax Collector

Municipality of OAKLAND

* Strike out "tenant in possession" where assessed to "owner" and vice versa.

** If an owner or tenant in possession of real estate to whom said real estate is taxed shall die before such demand is made on him, such demand may be made upon the executor or administrator of his estate or upon any of his heirs or devisees. Title 36, M. R. S. A., Section 942 as amended.

† If Municipality did not vote interest, strike out text between daggers. Title 36, M. R. S. A., Section 885, as amended.

†† Where served, strike out (mailing) and vice versa.

NOTE: When the undivided real estate of a deceased person has been assessed to his heirs or devisees without designating any of them by name, it will be sufficient to record in said registry this certificate in the name of the heirs or the devisees of said decedent without designating them by name, BUT THE HEIRS OR DEVISEES MUST FIRST HAVE NOTICE IN HAND, AT ABODE OR BY MAIL.

SUGGESTION TO COLLECTOR: Make written record of time of service of Tax Collector's Notice No. T371, and of recording No. T373 in Registry of Deeds, and of filing No. T376 with Municipality Treasurer, and of mailing No. T376A by registered mail to Mortgage Holders and of mailing No. T376B by registered mail to each assessment Record Owner. If copies are made and facts noted on each copy, you will have useful record of compliance with the Statutes.

Five Tree Line, No. T371 — Marks Printing House, Portland, Me.

APPENDIX 7

Waterville Morning Sentinel, November 16, 1979.

WATERVILLE MORNING SENTINEL NOVEMBER 16, 1979

Oakland Establishes New Procedure For Selling Tax-Acquired Property

By STEPHEN COLLINS
Sentinel Correspondent

OAKLAND — The Oakland Town Council Wednesday authorized formation of an Economic Development Committee, established a new procedure for selling tax acquired property and adopted the first reading of revisions to general assistance guidelines.

In the matter of selling property acquired because of non-payment of taxes, the council voted to dispense with the practice of allowing the original property owner to regain a clear title by paying back taxes and penalties anytime prior to the opening of bids on the property from the public.

The council's consensus was that the property owners have had plenty of warnings by registered mail, and that it would be unfair to bidders on the parcels to allow last-minute redemption as in the past. Under the new system the town will begin advertising to sell four properties acquired for non-payment of 1977 taxes.

The parcels include a house and land on Hussey Hill Road with the listed owners Doris and Paul Cummings; property on Summer Street of Laverne Watson Jr.; and property on Railroad Avenue listed under Gloria Gagnon.

The council established a 15-member Economic Development Committee for the town. The committee is charged with identifying problem areas and needs, establishing priorities, studying alternatives, developing programs and financial arrangements, and bringing recommendations to the town council. The committee is to develop a downtown development strategy, an industrial development strategy, and an overall economic profile of Oakland.

In adopting the first reading of welfare guideline revisions, the council approved instituting an actual expense for clothing in the household budget, increased rates for housing to reflect actual apartment costs, miscellaneous supplies for personal and household needs, and medical and dental expenses as required by state law.

One instance of duplication in assistance programs, according to Council Chairman Ralph Farnham Jr. in response to a question from Francis Krause, is that towns cannot take food stamps into account when figuring assistance, and must make a food allowance as if the stamps didn't exist.

Farnham proposed a further revision to require that a voucher system by used so that assistance granted must be spent on the item for which it is earmarked. While that system is already in practice, formal adoption of the revision will begin at the next meeting to make it written policy.

Councilman Charles Varney agreed to draft a motion that would require the town to use a bid procedure for more purchases than it currently does. Varney agreed that a charter amendment may not be necessary, but insisted that in not seeking competitive bids on large purchases that are for less than $1,000, the town was not being fair to all businessmen.

The town manager reported that as of Wednesday $286,777.25 had been paid in property taxes — about 40 percent of the total commitment. Farnham noted that that money would earn some $13,000 in interest before TAN notes come due, and thanked residents of town who paid their taxes early this year.

The council approved a new set of by-laws proposed by the Board of Appeals, and refused to endorse the Maine Coalition for Property Tax Relief. Councilman Robert Nutting said, "I can't see the point of having a town take a stand," concerning the coalition's request which seeks a voter referendum on certain tax issues.

APPENDIX 8

Domestic Mail Manual, U.S. Postal Service, Part 912.

ARTICLE NO.

IMPORTANT: Present this form to obtain your mail. ID required. Signature may be required.

You may pick up your mail after _____ M. (Date) _____ or notify your carrier or Post Office for redelivery.

MAIL IS AT

☐ REGISTERED ☐ INSURED/INSURED ☐ CUSTOM (Class Number) ☐ LETTER ☐ FLAT
☐ CERTIFIED ☐ COD ☐ EXPRESS MAIL ☐ POSTAGE DUE ☐ PARCEL ☐ HOLD

☐ SPECIAL DELIVERY (For special deliveries' Article) ☐ PLACED UNDER YOUR DOOR. ☐ PLACED IN YOUR LETTER BOX. ☐ RESTRICTED DELIVERY

☐ If not called for at Post Office before carrier begins his next regular trip he will deliver it to you. ZIP OF ORIGIN

☐ LEFT WITH RESIDENTIAL UNIT MANAGER

CLAIM CHECK NO.	2ND NOTICE (Date)	RETURN (Date)	AMOUNT DUE
			$

CUSTOMER (Please describe any visible damage)

ADDRESSEE NAME (Print)

ADDRESS

DELIVERED BY AND DATE

RECEIVED BY

PS Form 3849-B **DELIVERY REMINDER OR RECEIPT**

DELIVER ARTICLE TO ▶ ENTER NAME OF PERSON YOU AUTHORIZE TO RECEIVE THE MAIL

FORWARD TO ADDRESSEE AT ▶ ENTER FULL ADDRESS TO WHICH MAIL IS TO BE SENT

SIGNATURE OF ADDRESSEE OR AGENT | DATE

OFFICE RECORD OF DISPOSITION WHEN DELIVERY CANNOT BE MADE

☐ FORWARDED TO ADDRESSEE ☐ RETURNED TO SENDER (Name and Address)

☐ UNCLAIMED ☐ UNKNOWN ☐ REFUSED ☐ OTHER (Specify) | DATE | BY (Signature)

GPO : 1980 O - 320-736

ARTICLE NO.

IMPORTANT: Present this form to obtain your mail. ID required. Signature may be required.

You may pick up your mail after _____ M. (Date) _____ or notify your carrier or Post Office for redelivery.

MAIL IS AT

☐ REGISTERED ☐ INSURED/INSURED ☐ CUSTOM (Class Number) ☐ LETTER ☐ FLAT
☐ CERTIFIED ☐ COD ☐ EXPRESS MAIL ☐ POSTAGE DUE ☐ PARCEL ☐ HOLD

☐ SPECIAL DELIVERY (For special deliveries' Article) ☐ PLACED UNDER YOUR DOOR. ☐ PLACED IN YOUR LETTER BOX. ☐ RESTRICTED DELIVERY

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☐ LEFT WITH RESIDENTIAL UNIT MANAGER

CLAIM CHECK NO.	2ND NOTICE (Date)	RETURN (Date)	AMOUNT DUE
			$

CUSTOMER (Please describe any visible damage)

ADDRESSEE NAME (Print)

ADDRESS

DELIVERED BY AND DATE

RECEIVED BY

PS Form 3849-B **DELIVERY REMINDER OR RECEIPT**

in the consolidated delivery receipt file unless quantity accumulated over the filing period is less than 200 in which case use last digit only for breaking file. File firm delivery receipts, Form 3883, by the name of the addressee or chronologically by date.

.86 Undeliverable

Handle certified mail that is undeliverable or is to be forwarded in accordance with 159.33.

912.7 Verified Mailing Receipts

.71 Individual Mailings

Verify as follows:

a. Compare name and address of addressee on the article and on Form 3800, *Receipt for Certified Mail*.

b. If sender has checked blocks on Form 3800 for return receipt or restricted delivery service, make sure the article bears the proper endorsement.

c. Examine the return receipt card to determine whether appropriate blocks in instructions to delivering employee have been checked, and that the card is securely attached. Make sure address is properly completed by the sender.

d. Make certain that proper postal charges have been paid by stamps affixed; endorse mail if special delivery.

e. Postmark receipt portion and give to mailer. Initial, by the entry on the receipt in ink, time article was mailed if requested to do so by sender.

f. Deposit article in mail. Do not return to the mailer.

.72 Quantity Mailings

If the certified mail numbers are listed on firm mailing bills in consecutive order and the mail is similarly arranged, verify quantity mailings as follows:

a. Count the pieces of mail and listings on the bill. These should agree.

b. Compare certified mail numbers on first and last articles with the first and last articles with the first and last numbers listed on the bill. These should agree.

c. Make a spot check to determine that mailings are properly prepared, and that postal charges have been fully prepaid.

d. Postmark receipt and give mailer. Enter time articles were mailed if requested to do so by the sender, placing your initials by the entry. Use ink to enter time and initials in the space for the name of accepting employee.

e. Deposit articles in mail. Do not return to mailer.

912 Certified Mail

912.1 Description. Certified mail service provides the sender with a mailing receipt and a record of delivery at the office of address. No record is kept at the office at which certified mail is mailed. It will be dispatched and handled in transit as ordinary mail. No insurance coverage is provided. Return receipts and restricted delivery services may be obtained as set forth in 932 and 933 and by the payment of additional fees as provided in 932.2 and 933.2. For circumstances under which restricted delivery may be made by delivery to a person other than the addressee, see 933.4. Certified mail is marked in the following manner:

912.2 What May Be Certified. Only mailable matter of no intrinsic value on which postage at the first-class rate has been paid will be accepted as certified mail. This does not exclude articles of a nonnegotiable character and similar matter which would involve a cost of duplication if lost or destroyed. Special delivery services are available on payment of the prescribed fees. Special delivery services may be provided without prepayment of postage and fees on official mail sent by Federal Government agencies and departments under the provisions of 137.

912.3 Fees. The fees for certified mail are:

Fee in addition to postage	80¢
Restricted delivery	80¢
Return receipts	
Requested at time of mailing:	
Showing to whom and date delivered	45¢
Showing to whom, date, and address where delivered	55¢
Requested after mailing:	
Showing to whom and date delivered	$2.10

912.4 Mailing

.41 Payment of Fees and Postage. The fee and postage may be paid by ordinary postage stamps, meter stamps, or by permit imprints. The fee and postage on official mail of Federal Government agencies and departments are collected under the reimbursement procedures in 137.

.42 Points to Which Mailable. Certified mail may be addressed for delivery only:

a. In the United States, its territories and possessions;
b. In the areas comprising the former Canal Zone;
c. Through Army, Air Force (APO) and Navy (FPO) post offices; or
d. Through the United Nations, N.Y. post office.

.43 Where to Mail. Customers may mail certified mail at the post office, branch, or station or give it to a rural carrier. It may also be deposited in mail drops in post offices, street letterboxes, nonpersonnel units, or any other receptacles for First-Class Mail, provided the specific directions in 912.44 are followed.

.44 How to Mail. Obtain blank certified mail coupons, Forms 3800, *Receipt for Certified Mail*, (no charge) at the post office or from rural mail carriers. Also obtain blank return receipt forms if needed. Observe the following procedure:

a. Enter on the recipt protion of the certified mail coupon the name and complete address of the person or firm to whom the mail is addressed.

b. If a return receipt is desired, check the block on the mailing receipt to show the fee and endorse the article on the address side near the certified mail endorsement *Return Receipt Requested* or *Return Receipt Requested Showing Address Where Delivered*. The mailer must enter the certified mail number on the return receipt card, address it to himself, and attach it to the back of small envelopes and on front of packages and large envelopes if it will not cover the address. The name of the person to whom the return receipt is to be furnished must be the same as that of the sender as shown on the certified article. If the mailer desires that the return receipt show the address where the article was delivered, he must check the block at the top of the form.

c. Attach to the envelope sufficient postage stamps to pay for the certified mail fee, first-class postage, return receipt fee, or special delivery fee.

d. If a postmarked sender's receipt is desired, the sender must attach the certified mail sticker to the address side of the article and present the article and the completed coupon to the postal employee. If asked to do so, the postal employee will show on the receipt the time the article was accepted for mailing. If given to a rural carrier, he will return the postmarked receipt to the customer.

e. If a postmarked receipt is not desired, the sender must attach the *certified mail* sticker to the address side of the article, detach his receipt, and mail the article. He must mark his receipt to show the date.

f. If the sender desires to restrict delivery of certified mail to the addressee or someone named by him in writing, he must endorse the mail *Restricted Delivery*. This service is available only for articles addressed to specific individuals by name.

.45 Firm Mailing Books. If three or more letters are mailed at one time, the sender may use mailing books, Form 3877, which are furnished by the Postal Service without charge, or privately printed firm mailing bills. A series of numbers will be furnished to the sender. The sheets of the book become the sender's receipts. If the sender wants the firm mailing bills receipted by the

Postal Service, he must present the books with the articles to be mailed. He must also obtain, at his expense, a stamp to endorse the certified letters, or he may have his envelope overprinted with the endorsement. The endorsement must be a facsimile or proportionate enlargement of the official endorsement shown in 912.1. Following are instructions for use of firm mailing bills:

a. Insert the word *certified* in the space provided at the top of the bill.

b. The mailer must endorse and number the letters. If return receipt or special delivery services are requested, mark the letters *Return Receipt Requested, Return Receipt Requested Showing Address Where Delivered,* or *Special Delivery.* Prepare and attach return receipt to the envelopes with the receipt side showing.

c. Show on the bill the number of each article and the name and address of addressee.

d. Enter only the amount of fees paid for return receipts.

e. Affix necessary postage to the articles.

f. The accepting employee will count the items, postmark and receipt the bill for the total number, indicate time of mailing, if requested, and return the bill to the sender.

g. A postmarked receipt marked *Bulk Receipt* will be issued if the quantity mailings do not check out; if they are not listed and arranged to permit issuance of a verified receipt; or if the sender desires only a bulk receipt.

912.5 Delivery

.51 Procedure. *Certified* mail for delivery by carriers will be taken out on the first trip after it is received, unless the addressee has requested that the postmaster hold his mail at the post office. Certified mail not restricted in delivery will be delivered to the addressee or his authorized representative. Restricted delivery may be obtained as set forth in 933 and by payment of additional fees as provided in 933.2. For circumstances under which restricted delivery may be made by delivery to a person other than the addressee, see 933.4. Delivery rules are the same as for registered mail (see 911.4).

.52 Rural Delivery

For delivery by rural carriers or at nonpersonnel rural units, see 156.

.53 Highway Contract Route Delivery

Highway contract route carriers will deliver certified mail if required by the contract, but delivery will be made only at the customer's box or along the route.

.54 Delivery Records

The delivery records will be held for 2 years. At the end of that period the records will be destroyed.

.55 Notice of Arrival. The carrier will leave a notice of arrival on Form 3849-A, *Delivery Notice or Receipt,* if he cannot deliver the certified article for any reason. The article will be brought back to the post office and held for the addressee. If the article is not called for within 5 days, a second notice on Form 3849-B, *Delivery Reminder or Receipt,* will be issued. If the article is not called for or its redelivery requested, it will be returned at the expiration of the period stated by the sender, or after 15 days if no period is stated.

.56 Delivery at Post Office

Hold certified mail at a place convenient for the public to call if addressed for box or general delivery or for firm callers, of if a Form 3849-A or 3849-B had been left for addressee to call. Place Form 3849-A or 3849-B in post office box for lockbox customers. Form 3883 will be used where firm or other customers receive an average of three or more certified letters at one delivery.

912.6 Carrier Controls

.61 Assignment

Send certified mail, including that for firms, to a unit or employee designated to assign it for delivery. Assign as follows:

a. Individual Pieces. At offices with 190 or more revenue units, show on Form 3867, *Registered and Certified,* the total number of pieces given to each carrier. The carrier will receipt in bulk on Form 3867 for articles restricted in delivery and those for which returned receipts showing delivery address have been requested, and attach Form 3849-A or 3849-B stamped to show the special service requested. Use Form 3850, *Record of Delivered Registered, Numbered Insured, Certified, and COD Mail,* at post offices with 189 or less revenue units as the charge-out record. Receipt will be given in bulk by carrier on Form 3850.

b. Firm Mail. Prepare Form 3883, *Firm Delivery Book-Registered, Certified and Numbered Insured Mail,* in duplicate for addressees who receive an average of three or more pieces at one time. Do not include on firm bills articles restricted in delivery to the addressee. Handle these as covered in 912.61a. Use duplicate of firm bill as chargeout and dispose of it after carrier turns in receipted bill.

c. Specials. Assign special delivery certified mail separately for special delivery service, following the rules in 912.61a and b.

.62 Returns

Check carrier and messenger returns in the manner described in 911.763c. Carrier will turn in all undelivered articles, delivery receipts, and return receipts for delivered articles.

.63 Clearance

Carrier will prepare Form 3868, *Carrier's Clearance Receipt,* to show the combined total of returned certified letters and delivery receipts. The clearing clerk will sign this receipt and return it to the carrier or messenger as his personal record.

.64 Delivery to Military Installations

Certified mail addressed for delivery at military installations within the continental United States must be delivered to the military installations in the same manner as numbered insured mail.

.65 Filing Delivery Receipts

File individual delivery receipts, Form 3849-A or 3849-B, by the last two digits of the certified mail number

in the consolidated delivery receipt file unless quantity accumulated over the filing period is less than 200 in which case use last digit only for breaking file. File firm delivery receipts, Form 3883, by the name of the addressee or chronologically by date.

.66 Undeliverable

Handle certified mail that is undeliverable or is to be forwarded in accordance with 159.33.

912.7 Verified Mailing Receipts

.71 Individual Mailings

Verify as follows:

a. Compare name and address of addressee on the article and on Form 3800, *Receipt for Certified Mail*.

b. If sender has checked blocks on Form 3800 for return receipt or restricted delivery service, make sure the article bears the proper endorsement.

c. Examine the return receipt card to determine whether appropriate blocks in instructions to delivering employee have been checked, and that the card is securely attached. Make sure address is properly completed by the sender.

d. Make certain that proper postal charges have been paid by stamps affixed; endorse mail if special delivery.

e. Postmark receipt portion and give to mailer. Initial, by the entry on the receipt in ink, time article was mailed if requested to do so by sender.

f. Deposit article in mail. Do not return to the mailer.

.72 Quantity Mailings

If the certified mail numbers are listed on firm mailing bills in consecutive order and the mail is similarly arranged, verify quantity mailings as follows:

a. Count the pieces of mail and listings on the bill. These should agree.

b. Compare certified mail numbers on first and last articles with the first and last articles with the first and last numbers listed on the bill. These should agree.

c. Make a spot check to determine that mailings are properly prepared, and that postal charges have been fully prepaid.

d. Postmark receipt and give mailer. Enter time articles were mailed if requested to do so by the sender, placing your initials by the entry. Use ink to enter time and initials in the space for the name of accepting employee.

e. Deposit articles in mail. Do not return to mailer.

Cum K.D.

ORIGINAL

RECEIVED
DEC 2- 1981
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE SUPREME COURT

OF THE

UNITED STATES

NO. 81-5368

PAUL CUMMINGS

and

DORIS CUMMINGS

Appellants

vs.

TOWN OF OAKLAND

Appellee

MOTION TO DISMISS

The TOWN OF OAKLAND, APPELLEE, through their undersigned attorney, as provided in Rule 16 of the Rules of the United State Supreme Court, request that this court dismiss the APPELLANTS petition on the grounds that a substantial federal question is not at issue.

Dated: November 23,1981

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Attorney for Appellee
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Telephone (207) 873-0781

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